

REMARKS

The above-identified application has been reviewed in light of the Office Action mailed on March 18, 2009. Applicant submits that the present amendment is a supplement to the Amendment filed on June 16, 2009 and should be entered to correct typographical errors present therein. By the present amendment, Claims 31-50 are currently pending, of which, claims 48 and 49 have been amended herein. It is respectfully submitted that the claims pending in the application are fully supported by the specification, introduce no new matter, and are patentable over the references of record. Favorable action on the pending claims is earnestly requested.

Applicants would like to thank Examiner Lopez for the courtesy extended to the Applicants' attorney during the telephone interview conducted on June 9, 2009. In the interview, Examiner Lopez and Applicants' attorney reached an agreement that independent claim 31, as proposed to the Examiner and as amended herein, may be allowable over the cited art of record with the Examiner reserving the right to review the claim amendments in greater detail in view of the art of record.

Claims 41-43 and 45-47 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In the interview, Examiner Lopez agreed to withdraw the above-mentioned rejections, since the language of each of dependent claims 41-43 and 45-47 is, in fact, supported in independent claim 31. More specifically, independent claim 31 recites and provides support for "the first half-section includes a flat side having a recessed region formed therein" and "the second half-section includes a flat side having a recessed portion formed

therein.” Accordingly, withdrawal of the rejections with respect to claims 41-43 and 45-47 and allowance thereof is respectfully requested.

Claims 31-33 and 35-50 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,523,707 to Blake, III et al. (hereinafter referred to as “Blake”). Applicants respectfully submit that amended independent claims 31, 48, and 49 are each allowable over Blake because Blake fails to disclose each and every element of independent claims 31, 48, and 49. Accordingly, Applicants respectfully request withdrawal of the rejections of claims 31, 48, and 49 under 35 U.S.C. § 102(b).

In the interview, Examiner Lopez agreed that independent claim 31, as proposed to Examiner Lopez and as amended herein, may be allowable over the cited art of record. More specifically, as seen in FIGS. 7 and 8 of the present application, amended independent claim 31 recites a fastening apparatus for use in endoscopic surgery comprising, *inter alia*, “a fastener positioning spring attached to and flush with the recessed region of the first half-section, and a stop spring housed within the recessed portion of the second half-section.”

Similarly, amended claim 48 recites, *inter alia*, “a fastener positioning spring attached within the fastener storage channel of the first half-section” and amended claim 49 recites, *inter alia*, “a fastener positioning spring attached to and flush with the recessed region of the first half-section.”

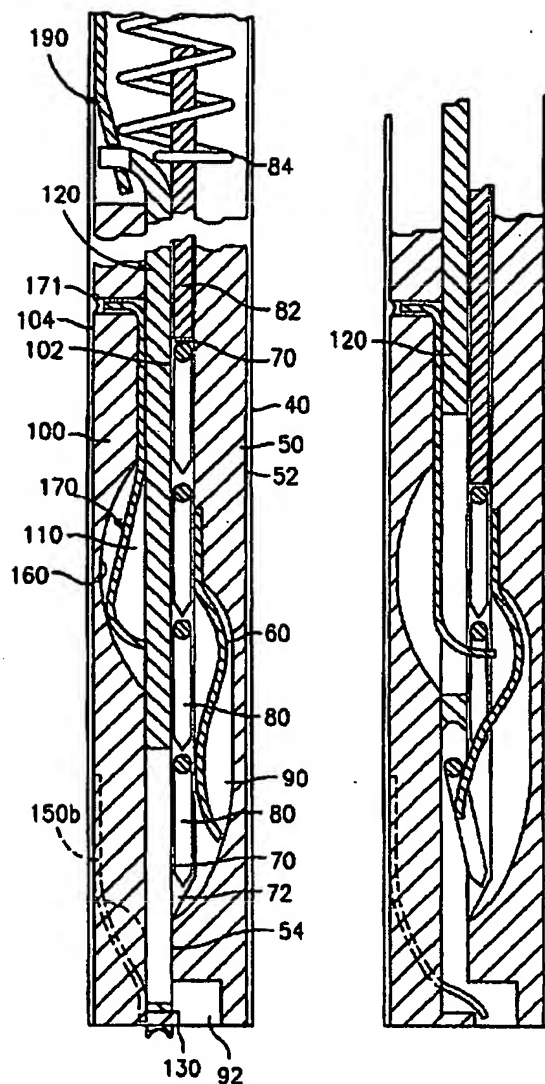
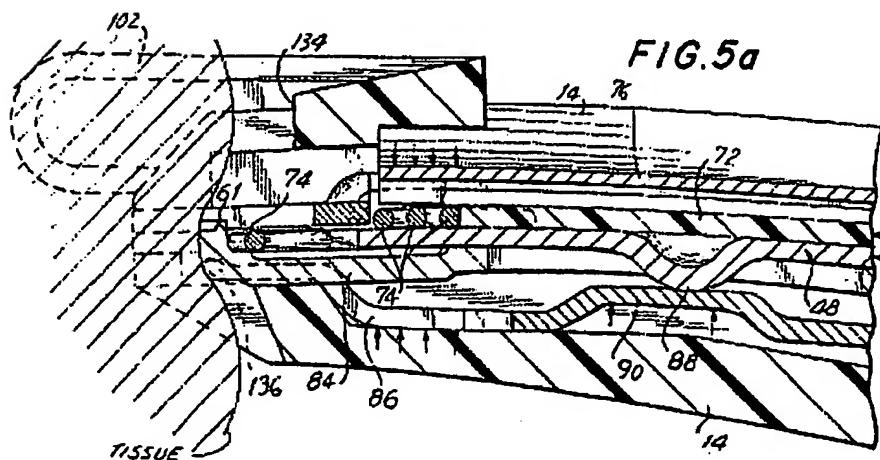
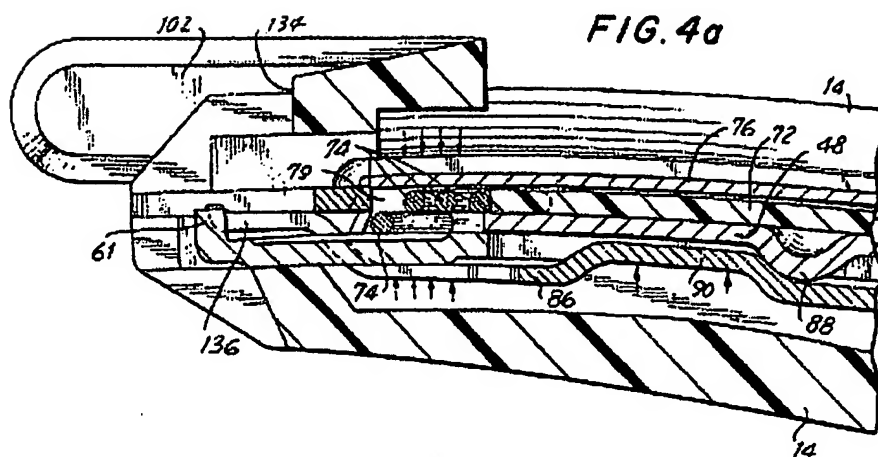


FIG. 7

FIG. 8

Blake discloses a stapler 10 includes a frame 10 having a pusher or driver 22. As seen in FIGS. 4a and 5a, the stapler further includes staples 74 that are retained beneath opposite edges 77 of cover 80 in a single track 79. Cover 80 of Blake also includes a follower 72, a driver 22, and an ejector spring 86 that is secured on the outside of a bottom cover 84.



However, in contrast to independent claims 31, 48, and 49 of the present application, Blake does not disclose or teach a fastener positioning spring attached to and flush with the recessed region of the first half-section and a stop spring housed within the recessed portion of the second half-section. Assuming, *arguendo*, that the Examiner is accurate in characterizing Blake as having a recessed portion of a second half section (vicinity of 48) and as having an ejector spring that is also a fastener positioning spring (86), Blake's ejector spring 86 is disposed outside the bottom cover 84. In other words, Blake's ejector spring 86 is not within the vicinity

of 48 (second half-section) of Blake.

For at least these reasons, Applicants respectfully submit that Blake fails to disclose each and every element recited in independent claims 31, 48, and 49, and therefore, that independent claims 31, 48, and 49 are allowable over Blake under 35 U.S.C. § 102(b).

Claims 32-33, 35-47, and 50 depend from one of amended independent claims 31 and 49, and thus include the limitations of amended independent claims 31 and 49. Therefore, according to at least the reasons given above for the allowance of claims 31 and 49, claims 32-33, 35-47, and 50 are allowable and the rejection with respect to these claims should be withdrawn.

Claims 34, 37-38, and 40 were rejected under 35 U.S.C. § 103(a) as being obvious over Blake in view of U.S. Patent No. 4,619,262 to Taylor (hereinafter referred to as "Taylor"). Taylor was cited by the Examiner to allegedly show a slide with a notch and a triangular anvil. Taylor fails to cure the deficiencies of Blake with respect to independent claim 31 as discussed above in that Taylor fails to show or describe "a fastener positioning spring attached to and flush with the recessed region of the first half-section, and a stop spring housed within the recessed portion of the second half-section," as recited in independent claim 31. Thus, for at least the reasons discussed above with respect to claim 31, *inter alia*, Applicants believe that claims 34, 37-38, and 40 are also in condition for allowance.

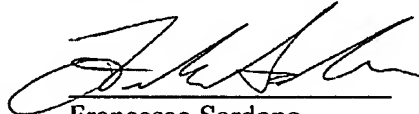
Moreover, since claims 34, 37-38 and 40 depend, either directly or indirectly, from independent claim 31, and contains all of the features of independent claim 31, Applicant respectfully submits that the subject matter of each of claims 34, 37-38 and 40, as a whole, is also patentable over Blake in view of Taylor.

In view of the foregoing amendments and remarks, Applicants respectfully submit that claims 31-50 are in condition for allowance.

Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at the number indicated below.

An early and favorable response on the merits is earnestly solicited.

Respectfully submitted,



Francesco Sardone
Reg. No. 47,918
Attorney for Applicants

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broadhollow Road, Suite 420
Melville, New York 11747
Phone: 631-501-5700
Facsimile: 631-501-3526
FS/nr

Correspondence address:
Chief Patent Counsel
COVIDIEN
60 Middletown Avenue
North Haven, Connecticut 06473